

E-Filed 3/23/2007

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

RANDOLPH DOSSETT,

Plaintiff.

V.

MERCK & COMPANY, INC., et al.,

Defendants.

Case Number C 07-0080 JF

ORDER¹ GRANTING MOTION TO STAY

[re: docket nos. 11, 13]

This case is one of many around the country pertaining to the alleged side-effects of the drug Vioxx. Defendant Merck & Company, Inc. (“Merck”) moves to stay proceedings pending a decision on transfer by the judicial panel on multidistrict litigation (“the MDL Panel”). Plaintiff opposes the motion to stay and moves to remand the case to state court on the basis that this Court lacks subject matter jurisdiction. Merck opposes the motion to remand on the basis that diversity was destroyed by fraudulent joinder of non-diverse defendants. The Court heard oral argument on both motions on March 23, 2007.

Merck provided notice to the MDL Panel of this “tag-along” action on January 12, 2007. The MDL Panel issued a conditional transfer order on February 1, 2007. According to Merck, at

¹ This disposition is not designated for publication and may not be cited.

present there are more than forty-five California cases that involve the same allegedly fraudulent joinder. Other courts in this district have stayed actions on similar or identical facts pending a determination by the MDL Panel. *See e.g.* Memorandum & Order Re. Motion to Remand, *Johnson v. Merck & Co., Inc.*, Case No. C 05-2881 (N.D.Cal. Mar. 2, 2007).

While the motion to remand the case advances strong arguments, these arguments may be heard by the MDL Panel and by the transferee court in the event transfer is ordered. In light of this consideration, in view of the rulings of other courts on this issue, and in the interest of judicial economy and consistency, the Court will stay this action pending a decision on transfer by the MDL Panel.

IT IS SO ORDERED.

DATED: March 23, 2007.


JEREMY FOGEL
United States District Judge

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